

Criteria for Judging the Effectiveness of Guardians' Consent

Xinran Lv *, Ke Zheng

School of Law, Shanghai University, Shanghai, China

* 1468873491@qq.com

Abstract. The rapid growth of data interests may increase the risk of damage to the interests of minors. Although there is a system of informed consent by guardians in the existing legal system, the restrictions on the validity of consent are vague, resulting in a large number of ineffective consents that violate the interests of minors. As for the restriction of the validity of consent, the representative theories in academic research are the "scene justice theory" and the "justifiable purpose theory". In this paper, we adopt the Cost-revenue analysis method to analyze the costs and revenue of the two doctrines and compare the net profit. Then, the Cost-revenue analysis of the "scene justice theory" as a perfection proposal and the existing system was conducted, and the conclusion was drawn. The proposal can protect the economic and personal interests of minors, and the cost of operating the system is low and fixed, and the cost of obligations is also low. In terms of net profit, the proposed improvement is better than the status quo, and the "scene justice theory" should be introduced as a criterion for judging the effectiveness of guardians' consent.

Keywords: Minors; Guardians' Informed Consent; Scene Justice Theory; Justifiable Purpose Theory; Cost-revenue Analysis.

1. The Research Problem

1.1 Research Background

With the emergence of the big data economy, all kinds of social relationships are facing the challenge of being reconstructed, and some new legal issues have emerged and need to be solved, and the protection of minors' rights and interests is one of the important parts. In China, Kuaishou Company was forced to pay high compensation for illegally collecting and pushing short videos of minors, while overseas, TikTok was forced to pay a million dollar fine for violating the Children's Online Privacy Protection Act. This shows that while minors' mental development is still unstable, but their personal information has commercial value. The massive dissemination of such information makes minors vulnerable to infringement of their rights, which is undoubtedly a gap in information management. According to the existing "informed consent system", information collectors can legally use minors' information after obtaining guardian's consent. However, only 1% of the users read the privacy policy provided by the collection subject, and the means of information utilization tend to be diversified, so the "notification consent system" is often null and void. Minors' information is highly sensitive and carries a great deal of personality interests, and the "consent" of guardians should not be the only basis for the legitimacy of information collection. Therefore, in order to strengthen the protection of their privacy, it is advisable to explore specific legislative models, limit the scope of application of the guardian's consent system, and redefine the effectiveness of guardian's consent.

1.2 Research Question

Based on the background of the study, the research question of this paper is how to limit the scope of application of the guardians' consent system and determine the criteria of whether guardian's consent is valid. From the current situation, it can be seen that the main defect of the "informed consent system" is that poor information can lead to untrue expressions of intent. Therefore, it is necessary to take certain supporting measures to close the loopholes in the framework of informed consent. In order to find a more reasonable solution, this paper summarizes court cases and academic opinions, analyzes their advantages and disadvantages, and then conducts a comparative analysis of their costs and benefit to find a more optimal solution.

1.3 Research Significance

Firstly, the personal information of minors is highly sensitive and needs to be protected. Secondly, minors have cognitive defects and often cannot express their will independently, and the consent made by guardians on their behalf may be an incorrect expression of their true will, which will instead aggravate the infringement that is difficult to be remedied. The purpose of this study is to find a better legislative model to limit the effectiveness of guardian's consent and protect the rights and interests of minors more effectively.

1.4 Research Structure

The first part of this paper consists of three parts, the first part of which is a review of the legal norms, with the intention of clarifying the object of the study and pointing out the legislative defects through systemic and purposive interpretations. The second part is the analysis of existing views, mainly through judicial cases and academic views to summarize feasible solutions, and on this basis to analyze and compare. The third part is a proposal for the improvement of the solution, which is based on the second part to select a better solution and propose a solution to protect the interests of minors.

2. Legal Regulation Summary

2.1 Scope of Application of the Guardians' Informed Consent System

To study the scope of effect of the informed consent system, we must first clarify its legal connotation. According to Article 1035 of the Civil Law of the People's Republic of China, if personal information is processed, the purpose, manner and scope of the processing of the information shall be expressly stated and the consent of the natural person or his guardian shall be obtained. (Paragraph 1 of Article 1035 of the Civil Law of the People's Republic of China: The processing of personal information shall follow the principles of legal, proper and necessary, shall not be excessive, and shall comply with the following conditions: (a) the consent of the natural person or his guardian is obtained, except as otherwise provided by laws and administrative regulations) If personal information is processed without valid consent, the subject of the right has the right to exercise the right to request the service provider to stop the infringement and delete the information in accordance with Article 31 of the Law of the People's Republic of China on the Protection of Personal Information. (Paragraph 1 of Article 31 of the Personal Information Protection Law of the People's Republic of China: If a personal information processor processes the personal information of a minor under the age of fourteen, it shall obtain the consent of the minor's parents or other guardians.)

In order to further explore the effectiveness of the system, it is necessary to clarify the cases in which the "guardian" is entitled to give consent. From the basic provisions, the subjects who can exercise the right of deletion include the right obligee himself or his "guardian". According to Article 19 of the Civil Law, (Article 19 of the Civil Law of the People's Republic of China: Minors over eight years of age are persons with limited civil capacity and shall be represented by their legal representatives or have their legal representatives' consent or retroactive approval to perform civil legal acts; however, they may independently perform civil legal acts of pure gain or civil legal acts appropriate to their age and intelligence.) The act of a person without civil capacity is null and void. Therefore, for minors under 8 years old, the guardian has the right to give consent. Article 31 of the Law of the People's Republic of China on the Protection of Personal Information shows that if a personal information processor processes the personal information of a minor under the age of 14, it shall obtain the consent of his or her guardian. (Article 31(1) of the Personal Information Protection Law: If a personal information processor processes the personal information of a minor under the age of fourteen, it shall obtain the consent of the minor's parents or other guardians.) In conjunction with the provisions of Article 20 of the Civil Law, persons with limited capacity have a certain ability to judge. (Article 20 of the Civil Law: Minors under eight years of age are persons without civil capacity

and shall be represented by their legal representatives to perform civil legal acts.) For those under 14 years of age, consent must be given by the guardian; for those between 14 and 18 years of age and capable of giving consent, no guardian is required to fulfill the obligation; for those who lack the corresponding ability, consent from the guardian is still required.

In short, minors under 14 years of age or over 14 years of age who do not have the appropriate capacity need the consent of a guardian. The effect of the above-mentioned consent of the guardian is the scope of this article.

2.2 Effect of Guardians' Consent

However, the guardian is not the minor himself/herself, and the intention expressed on his/her behalf may not be in accordance with the will of the ward. In this case, if the system of informed consent is applied across the board, the legitimate rights and interests of the minor may be harmed. In this regard, the provisions of the Civil Law and the principles of the Law on the Protection of Minors both limit the scope of application of the consent system.

Article 35 of the Civil Law establishes the guardian's "duty of proper guardianship", (Article 35 of the Civil Law: The guardian shall perform the duties of guardianship in accordance with the principle of the best interest of the person under guardianship. The guardian shall not dispose of the property of the ward except for the purpose of safeguarding the interests of the ward. Guardians of minors performing guardianship duties shall respect the true will of the ward when making decisions related to the interests of the ward in accordance with the ward's age and intellectual status. Guardians of adults performing guardianship duties shall respect the true will of the ward to the greatest extent possible, and shall safeguard and assist the ward in performing civil legal acts appropriate to his or her intellectual and mental health status. The guardian shall not interfere in matters that the ward is capable of handling independently.) i.e.: "The guardian shall perform the guardianship duties in accordance with the principle of the best interest of the ward The guardian shall respect the true will of the ward in accordance with the age and mental condition of the ward." If the guardian ultimately makes a decision that is inconsistent with the interests of the ward, he or she shall be deemed to have failed in his or her duty of proper guardianship, and such "consent" shall be null and void as being contrary to the provisions of the law.

From the above provisions, it is clear that our law generally provides that the guardian should give consent on behalf of the subject who does not have the appropriate capacity to make up for his or her deficiencies. However, it is not clear how to determine whether "consent" is in the interest of the minor. According to Article 72 of the Law on the Protection of Minors, the principle of dealing with personal information of minors is "legal, proper and necessary". If a guardian gives "consent" in error, the collection of information does not meet the requirements of " legal, proper and necessary" and constitutes a defect in the validity of the consent. (Paragraph 1 of Article 72 of the Law on the Protection of Minors: Information processors who process personal information of minors through the Internet shall follow the principles of legal, proper and necessary. If the personal information of a minor under 14 years of age is processed, the consent of the minor's parents or other guardians shall be obtained as appropriate, except as otherwise provided by laws and administrative regulations.) However, "legal proper and necessary" is only a principal requirement, and in practice, the criteria for judging the validity of guardian's consent are still vague, and there are no criteria for judging valid consent.

3. Existing Opinions of Chinese Courts

There are two different views of our courts on the judgment standard of guardian's valid consent to the collection and use of minors' information, and since there are fewer applications of such cases in our judicial field, this paper cites some cases of collection and use of non-minors' personal information for research and summary.

3.1 Scene Justice Theory

The scene justice theory holds that whether the collection and use of personal information of minors is in line with the scene justice should be used as the judgment standard.

For example, in the case of medical service contract dispute between Liu Xuelin and Chengdu Gaoxin District Yunya Shu Yue Medical Beauty Clinic Co., Ltd, the beauty institution obtained consent for the surgery, but was still liable for the serious consequences caused after the surgery. The court held that the validity of the consent should be confirmed based on the balance of interests of both parties, i.e., the specific scene as a factor to judge whether the consent is valid. (See Liu Xuelin and Chengdu High-tech Zone Yunya Shu Yue Medical Beauty Clinic Co., Ltd. medical service contract dispute, Civil Judgment of Chengdu High-tech Industrial Development Zone People's Court of Sichuan Province (2020) Chuan 0191 Min Chu 12476.) Although the parties in the case were not minors, the court's standard for determining the validity of consent is worthy of reference for the standard for judging valid consent of guardians. For example, in the case of Liujia and others against Jiangsu Education TV Station, in which the mother of a minor was interviewed by CCTV about her daughter's rape by her brother-in-law, but Jiangsu Education TV station broadcast the incident without the consent of the information subject and did not anonymize personal information, the court held that although the act of news dissemination was beneficial to the realization of the public's right to know, in the court held that although the act of news dissemination is beneficial to the realization of the public's right to know, when its value conflicts with the rights and interests of minors' personal information, the special protection of minors should be emphasized, and therefore the act is not a legitimate reason to exclude the application of the guardian's informed consent system.(See Liu A, et al. v. Jiangsu Education TV Station for Reputation Infringement by Broadcasting News Containing Private Content, Civil Judgment of Gulou District People's Court, Nanjing City, Jiangsu Province, No. 366, [2005] Gumin San Chu Zi.) For example, in the case of Fengjun Mao versus Nantong Branch of China Telecom Group Yellow Pages Information Co., Ltd. and other privacy disputes, the defendant implemented the principle of informed consent when collecting the plaintiff's personal information and did not give informed consent for the later issuance of the address book. The court considered that the issuance of the address book met the standard of fair use, taking into account the scene of information use, i.e., the business behavior of the information company and the information dissemination principle of the information company. (See Mao Fengjun v. China Telecom Group Yellow Pages Information Co., Ltd. Nantong Branch and Other Privacy Disputes, Civil Judgment of Nantong Intermediate People's Court, Jiangsu Province, No. 0952 (2011) Tongzhong Minzhizi Zizhi.)

3.2 Justifiable Purpose Theory

The justifiable purpose theory holds that the collection and use of personal information of minors should be judged by whether the purpose is justifiable.

For example, in a civil public interest lawsuit against a well-known domestic short video company for infringement of children's personal information, the company failed to inform the children's guardians in a prominent and clear manner of the manner, purpose and use of the collection and use of information, i.e., registering children's accounts, and collecting and storing children's personal information. The court held that the short video company did not inform the children's guardians of the relevant details in a conspicuous and clear manner and without a clear purpose, and therefore violated the children's personal information rights. [1] For example, in the appeal case of the privacy dispute between Zhu Ye and Beijing Baidu.com Technology Company, Baidu used Zhu Ye's Internet search keywords to reveal his personal characteristics on relevant websites and to place relevant advertisements without his knowledge and consent, and the court considered that Baidu used the user's personal information for the purpose of pushing personalized services, and thus held that Zhu Ye's implied consent was valid. [2]

3.3 Deficiencies of the Existing Views of Our Courts

1. Deficiencies of the Scene Justice Theory

For the scene justice theory, scene justice is used as the judgment standard for the valid consent of the guardian of a minor. In the case, although the court adopted the criterion of scene justice in judging whether the consent was valid, it did not systematically analyze the elements of scene justice, but only used certain elements of scene justice as arguments to support the verdict, which was an immature way of using the criterion of scene justice.

2. Deficiency of Justifiable Purpose Theory

The second view uses justifiable purpose as the criterion for judging the valid consent of the guardian of a minor. Justifiable purpose should include three elements, namely, relevance, specificity, clarity and legality. In most of the cases, the collection and use behaviors of network operators do not meet the justifiable purpose, but they do not explain how the relevance, specificity, clarity and legitimacy of the purpose are reflected in specific cases, i.e., they do not explain the specific reasons for not having the justifiable purpose in the reasoning section.

4. Existing Views in Academic Research

As to how to limit the scope of application of the informed consent system and protect the legitimate rights and interests of minors, there are two views in academic circles: the scene justice theory and the justifiable purpose theory.

4.1 Scene Justice Theory

The first view is the scene justice theory, which states that the consent of the guardian is invalid for collections that do not conform to the scene justice. The scene justice theory analyzes whether the specific use behavior is reasonable in a specific context, and for unreasonable collection and use behavior, even if the user's consent is obtained, it does not exempt the infringement responsibility. [3] According to the five elements of scene (Elements included in the scenario integrity argument: the recipient of the information, the type of information and the sensitivity of the information, whether the collection and use of the information is consistent with the balance between individual interests and the public interest, and whether it is judged in accordance with the state rules regarding the collection of that type of information.), when collecting information of minors, the main consideration is the nature of the information collector (such as whether it belongs to the state organ and whether it is in accordance with the law) and the type of information (whether it is sensitive information): for the commercial behavior of the information collector, the collection of sensitive information of minors is directly restricted without the intention of the guardian. Among them, the criteria for judging sensitive information refer to the definition of the Credit Regulations and the Protection Guidelines. [4] For example, Yao Jia believes that the specific effect of consent should be determined for different purposes of use and ways of utilization. Among them, the commercial collection of sensitive information should be restricted by law. [5] Fan Wei believes that risk assessment should be conducted based on the scene theory, and thus the scope of the effectiveness of consent should be determined. Due to the high risk of sensitive information, the collection authority of the collector should be directly restricted, instead of the guardian making the decision. [6]

4.2 Justifiable Purpose Theory

The second view is the Justifiable purpose theory, which holds that the principle of justifiable purpose (The principle of purpose limitation means that data that does not meet the purpose and cannot be used cannot be collected, including elements that are relevant, specific, clear and legitimate for the purpose of collection.) is more effective than the principle of informed consent, and that the system of informed consent does not apply when the act violates the principle of justifiable purpose. Due to the uneven judgment of guardians and the difficulty of analyzing the interests of minors, some scholars advocate that the validity of consent should be judged by the collection behavior of the collector: if the collector clearly informs the purpose of collecting information and the purpose is consistent with the principle of information collection, the informed consent system can be applied

and the consent of the guardian is valid. The consent of the guardian is valid. If the purpose of collection is improper, or if the act of use is inconsistent with the purpose communicated, the principle of purpose limitation is violated and the informed consent system does not apply, and the consent of the guardian is invalid.

For example, Zhang Xinbao believes that "purpose limitation" and "informed consent" are both principles of information collection. When information is collected without a legitimate purpose, the principle of purpose limitation, which is of a higher order, is violated. In such a case, the informed consent system does not apply. [7] Xie Lin mentioned that "the framework of the informed consent system should be constructed on the basis of the principle of purpose limitation. When the collection does not meet the legitimate purpose, the informed consent system does not apply, and the user's consent does not exempt the information collector from infringement liability. [8] According to Lin Kai and Zhang Jianxiao, data collection should follow the "purpose limitation principle". For data that do not meet the purpose, even if the user's consent is obtained, the data cannot be collected. [9]

5. Shortcomings of Existing Opinions and Research Methods

5.1 Shortcomings of Existing Views

The existing views in academic circles include Justifiable purpose theory and scene justice theory, both of which are consistent with the basic principle of "legal, proper and necessary" information collection, but there are some differences in operation mechanism and efficiency.

1. Defects of the Scene Justice Theory

Unlike the Justifiable purpose theory, the scene justice theory directly excludes consent to collect sensitive information by law, weakens the role of guardians in protecting the rights of minors, and emphasizes the coercive power of the system. It is true that the scene justice theory proposes clear criteria for information risk analysis and analysis of the factors of information collection subjects in the framework of basic principles, but the right to information self-determination and freedom of trade in the private law perspective are restricted. In other words, the use of personal information will be controlled by society, not by the will of individuals. [10] Under this system, sensitive information of minors will be excluded from commercial use, regardless of private will, and all activities will be hindered. As a result, the trust economy based on consensual construction would also be undermined, companies would lose the incentive to mine data, and the development of the big data industry would be hindered. The cost of this economic model is obviously too high. [11] In addition, the protection of the economic value of data circulation is also the goal of personal information protection law. The European Union's General Data Protection Regulation (Article 1 of the Law of the People's Republic of China on the Protection of Personal Information: In order to protect the rights and interests of personal information, regulate personal information processing activities, and promote the rational use of personal information, this Law is enacted in accordance with the Constitution.) has made the protection of personal data rights and the free flow of data equally important legislative objectives; China's Personal Information Protection Law (Expert Draft) also recognizes the protection of the economic value of data circulation. It is clear from the legislative purpose that attempts to protect the interests of personality still need to be balanced with economic development to prevent the imbalance of social interests.

2. Deficiencies of Justifiable Purpose Theory

Under the framework of Justifiable purpose theory, the criterion for judging whether to apply the "informed consent system" is whether the purpose is justifiable or not. However, this system has some drawbacks. Firstly, the purpose is not quantifiable and the boundary is blurred, but it is still a restatement of the basic principles of information collection, which is not effective. Secondly, under this system, it is the guardian's responsibility to judge whether the purpose is justified or not. In the big data environment, the use of information is ever-changing and risky. Moreover, the vast majority of identifiable personal information is not provided by individuals, but is formed in real time by algorithms such as information systems and network operations, and individuals are unable to identify

the use and impact of massive amounts of data. Therefore, most guardians do not have the ability to determine whether the purpose is "relevant" and "clear". And from the current survey data, the probability of guardians reading the authorization clause is less than one percent. Therefore, in general, guardians are unable to give true and valid consent. Finally, under this system design, it is only possible to judge whether the purpose is justified or not and whether the use is in accordance with the purpose after the act of collection and use is implemented, and the focus of review shifts from collection to use. However, at the stage of use, the infringement on the rights and interests of minors has already occurred, and can only be mended afterwards.

5.2 Research Methods of This Paper

1. Criteria for Evaluating the Advantages and Disadvantages of the System

In this paper, the size of the net profit in economics is used as the criterion for comparison and evaluation, so the Cost-revenue analysis method is used for this paper. In evaluating the advantages and disadvantages of different views, the evaluation criteria used in this paper are as follows.

First, the question of the revenue of the legal system can be measured using the degree to which the legal system achieves the purpose of the legislation as a criterion. According to the legislative purpose of Article 1 of the Personal Information Protection Law and Article 1 of the Law on the Protection of Minors, the purpose of establishing the guardian informed consent system consists of two parts: one is to protect the economic value of minors based on personal information, and the other is to protect the personality rights of minors. In summary, the criteria for evaluating the size of the revenue is : the protection of the economic and personality interests of minors.

Second, the question of the cost of the legal system can be measured in terms of the cost of the obligation and the cost of operating the system. A system that limits the effectiveness of consent involves two subjects: the information collector and the guardian. Therefore, the obligation cost includes the cost of disclosure and review of information by the information collector in order to obtain valid consent, and the effort spent by the guardian to give consent, while the system operation cost is the cost of legislation and the cost of interpretation by the court in resolving disputes. Therefore, the clearer the constituent elements of the criteria, the more specific the criteria for the determination of facts, the easier the application of the law and the smaller the cost of interpretation by the court.

2. Perfection of the Proposed Evaluation Criteria

In modern economic society, efficiency is an important value that we pursue, and only when the output is greater than the input, we think that this "production" is beneficial to human society. Therefore, the evaluation of the improvement proposal will also use the Cost-revenue analysis method in economics, comparing its advantages and disadvantages with the existing system, and judging whether the improvement measures are economic.

First, the revenues of the proposed improvements. Changing the system would enhance the protection of minors' personal and economic interests. Therefore, compared to the existing system, the proposed improvement will generate a certain "marginal revenue". Therefore, the revenue of the proposed improvement is the increased revenue of the improved system compared to the existing system, which in this paper is the enhanced protection of the minor's personal and economic interests.

Second, the cost of improving the proposal. The cost of improving the proposal is mainly the cost of changing the system, including the cost of legal interpretation and the cost of changing the legislation. Since this paper is a discussion of the criteria for guardian s' consent to be effective, the costs focus on the costs of legal interpretation or legislation.

6. Comparison of the Advantages and Disadvantages of Different Views on "The Criteria for Judging the Effectiveness of Guardian's Consent"

Regarding the criteria for judging the validity of guardian's consent, there are two views: the first view is the scene justice theory, which judges whether the collection and use of personal information

of minors is in line with the justice of the scene; the second view is the purpose limitation theory, which judges whether the purpose of collecting and using personal information of minors is justified.

6.1 Comparison of the Revenue of Different Views

1. Revenue of Scene Justice Theory

The revenue of scene justice theory are that the application of scene justice theory excludes the inappropriate collection of sensitive information of minors and focuses on protecting their personality interests while taking into account their economic interests. The specific revenue are as follows.

First, scene justice theory can distinguish the recipients of information and precisely identify the collection behavior for profit. In other words, the system restricts operators from obtaining sensitive information of minors, prevents them from making profits through infringement, and indirectly protects the economic interests of minors. Secondly, the application of the scene justice theory can distinguish situations and specifically protect the personality interests of minors. For example, in medical scenes, sensitive information of minors is collected for the purpose of diagnosis and treatment to protect the right to life and health. Therefore, the judgment on the validity of guardian s' consent is more lenient. For operators who collect sensitive information of minors, the collection is directly restricted or prohibited by the system, and the guardian's informed consent system is not applied. This shows that the scene justice theory can protect the personality rights of minors to a greater extent.

2. Revenue of Justifiable Purpose Theory

The adoption of purpose justifiability as a criterion for valid consent requires an examination of whether the three elements of relevance, specificity, clarity and legality are present. The specific Revenue is as follows.

First, the first element of purpose justifiability is relevance, which is to determine whether the purpose of collecting personal information of minors is relevant to the services provided. The relevance review can better circumvent the situation that public subjects collect personal information for commercial use and commercial subjects collect personal information for illegal use. Reduce the improper income based on the personal information of minors and protect the economic rights and interests of minors.

Second, the second element of purpose justifiability is specificity, that is, the purpose of the act should be determined before collecting and using the personal information of minors. Moreover, the description of the purpose by the collector should be discernible, even if the guardian can foresee the consequences of collection and use. The principle of specificity works through the examination of the collector and the guardian to prevent the collector from setting a literal trap in the service contract by a kind of deception-like means to conceal the actual purpose under the guise of the legitimate purpose of use. Accordingly, the restriction of the principle of specificity can protect the personality interests of minors.

Third, the third element of purpose justifiability is clarity and legality, which requires that the information collector's disclosure of the information produce an accurate understanding by the guardian. Under this element, the information collector is required to disclose a great deal of detail for the guardian to understand. The efficiency of professional review over guardianship screening enhances the protection of the minor's personality interests.

3. Comparison of Two Kinds of Revenue

After comparison, scene justice theory covers a wider scope and protects a wide range of efficiency. Firstly, justifiable purpose theory lacks practical standards and is a principle-based guideline, which has limited efficiency in realizing the revenue. scene justice theory proposes existing guidelines for the collection of subjects, sensitive information and other elements, and the standards are clear and easy to implement. Secondly, compared with the justifiable purpose theory, which only evaluates the purpose of use of a single subject, the scene justice theory can analyze individual cases based on scenes, and the elements of evaluation are not limited to information collectors, which is a more comprehensive standard system. Third, justifiable purpose theory relies more on the cognitive ability of the guardian, while scene justice theory is guaranteed by the enforcement power of the law.

Although the justifiable purpose theory reduces the difficulty of understanding the contract, the main duty of examination still rests on the guardian. The system is inefficient in practice because guardians do not have the expertise to read the terms carefully to make a predetermination. Scene justice theory directly restricts the authority to collect sensitive information without the need for guardians to make a meaningful representation, which is efficient and has a high intensity of protection. Therefore, although both the justifiable purpose theory and the scene justice theory can achieve economic and personality interests, the latter system is more perfect and has more revenue.

6.2 Comparison of the Costs of Different Views

1. Costs of the Scene Justice Theory

In terms of obligation cost, it includes the obligation cost of information collectors and guardians. First of all, the obligation of the information collector lies in the analysis of the type of information and the nature of the information recipient, taking the scene justice as the judgment standard. Due to the sensitivity of the information and the triviality of the risks caused by the collection and use of information, the collector of information needs to spend a lot of effort to review and change the terms of the service contract, and even cause the commercial entities to abandon the collection and use of information due to the high cost, which limits the source of revenue for the commercial entities. Secondly, in the scene justice theory, the guardian's consent system is not applied to sensitive information, and the collection authority is directly regulated by law. In other words, using scene justice as the criterion for effective consent actually implies that guardian's consent can be given in different ways in different scenes: instead of strong or weak consent, the risk level is inferred for different scenes, and then guardian's consent is obligated to different degrees. In some scenes related to public affairs and the collection and use of low-sensitive information, the burden of guardian's consent obligation is reduced; in some scenes where highly sensitive information is collected and used (e.g., collecting sensitive information for profit), the collection and use of personal information of minors is directly excluded in accordance with the law, and guardian's consent is directly exempted.

In terms of operational costs, the justification of the scene of informed consent in the existing legal system cannot be clarified by the system interpretation, so it is necessary to add this criterion in the legal interpretation as a specific criterion for judging the principle of "legitimate, reasonable and appropriate", and there is an interpretation cost. However, this cost is small and fixed, and exists only at the beginning of the system, not for a long time. The costs incurred by the court in litigation focus on the examination of sensitive information and the qualifications of information collectors, as well as the judgment of the legitimacy and risk of the collection behavior in specific situations, and the costs of interpretation accordingly.

2. Costs of Justifiable Purpose Theory

First of all, the cost of obligation is analyzed. On the one hand, the obligation of information collectors lies mainly in changing the service contract, disclosing their collection intentions and use details in accordance with the justifiable purpose principle, and explaining them in a general way, which requires material and time costs. But the obligation to disclose does not require a specific determination of the content of the disclosure under each specific scene, but rather a typological and uniform disclosure. On the other hand, the guardian's obligation also imposes a heavy duty of review. purpose justifiability requires that the information collector's disclosure of information produce an accurate understanding by the guardian. Under this element, the collector is required to disclose a great deal of detail for the guardian's review. The massive amount of paperwork will continue to consume their energy and time.

Second is an analysis of the costs of operating the system. First, there is no legislative cost for purpose justifiability as a standard, but there is an interpretation cost, which has been stipulated in "Information Security Technology Personal Information Security Specification" as "clear purpose - with definite, clear and specific purpose of personal information processing". Therefore, it is only necessary to make a systematic interpretation in conjunction with the principle of "lawful, justifiable and necessary" collection in the Law on the Protection of Minors, so that the purpose can be achieved

without significantly changing the legal framework. Secondly, there are three specific elements in the evaluation of purpose justifiability, which the court needs to take into account when making its decision. Therefore, in litigation, the court needs to identify the scope of service of the recipient of the information in order to determine whether the purpose is relevant. In the Internet field, information collectors often have multiple functions, which require the court's discretion and interpretation according to the principle. Secondly, whether the information recipient fully fulfills its disclosure obligations needs to be analyzed in the context of specific cases, and the lack of uniform standards makes it difficult to exercise discretion in practice.

In comparison, both the justifiable purpose theory and the scene justice theory incur institutional costs and obligation costs. For guardians, the application of the scene justice theory has fewer consent matters; for service providers, the standards are clearer and it is easier to fulfill responsibilities; and for courts, there are quantifiable standards that consume fewer judicial resources. In terms of system operation costs, both options incur interpretation costs and consume essentially the same. Combining the costs of system operation and obligations, the total cost of scene justice theory is lower.

6.3 Comparison of Net Profit of Different Views

The net profit is the difference between the profit and the cost of the system. However, in terms of cost, the scene justice theory has clearer standards, easier implementation, less obligation for the obligor, and less consumption of judicial resources, so the cost is obviously smaller. Therefore, the net profit of the scene justice theory should be considered greater.

7. Suggestions for Improving the Criteria for Judging the Effective Consent of Guardians to the Collection and Use of Minors' Information

7.1 The Revenue of the Proposed Improvement Compared with the Existing System

1. Existing System

The existing law takes "informed consent" as the basic institutional framework for collecting information from minors, and only three principles of "legal, proper and necessary" exist, which indirectly restrict the effectiveness of guardian's consent, and the standard is rather vague.

2. Possible Suggestions for Improvement

We should introduce "scene justice" as the criterion for guardian's consent to be effective. Specifically, the validity of guardian's consent can be judged by analyzing the components of the scene in specific situations (focusing on the sensitivity of the information and the nature of the subject of collection). In the case of sensitive information, the law directly stipulates the authority to collect it, without relying on the guardian's intention.

3. The Advantages of Perfecting the Proposal Compared with the Existing System

The existing system only provides the abstract principle of "legitimate, reasonable and appropriate" for the standard of effective consent in the guardianship informed consent system, and does not clarify its connotation, which actually has the tendency of being metaphysical and big but empty.

The advantages of the proposed improvement are as follows: First, the introduction of "scene justice" actually provides specific criteria for determining whether the three principles are met, which is convenient for the application of the law. Second, the analysis of scene justice includes the analysis of the sensitivity of minors' personal information, which can strictly determine the validity of consent to collect highly sensitive information, such as minors' privacy, or even prohibit the collection and use, and reduce the risk of harming minors' physical and mental health and personality interests. Thirdly, the analysis of scene justice includes the analysis of the type of information recipient, which is helpful to analyze whether the collection and use of certain information by the information recipient will harm the legitimate rights and interests of minors from the scope of service of the information recipient, for example, there is a risk of unlawful gain for the commercial information recipient who collects personal information of high sensitivity, and it is urgent to determine the validity of strict

consent. Fourthly, the introduction of "scene justice" as a criterion is helpful to alleviate the "consent fatigue" of guardians.

7.2 Costs of Perfecting the Proposal

The cost of achieving perfect advice is divided into the cost of obligation, i.e., the obligation for the recipient of information to review the elements of the scene of information collected and used; the cost of system operation is the cost of legislation, which is not provided in the existing system and therefore requires legal interpretation; the cost of system operation is the cost of court application of law in litigation activities. However, under the existing system, the court has no normative standard for the application of the three abstract principles as a reference, and the addition of scene justice as a specific standard actually provides the court with the idea of determining the application of the three principles, which is to make the abstract concept concrete.

7.3 Comparing Whether the Revenue of Perfecting the Proposal Outweigh the Costs

Comparing the costs and revenue of the proposed improvements, we can find that the introduction of "scene justice", a standard for determining valid consent, is conducive to reducing the risk of using minors' personal information for improper revenue; enhancing the protection of minors' physical and mental health and personal interests, while reversing the situation where guardian's consent is superficial and cannot truly avoid infringement of minors' legal rights and interests, and shifting the excessive burden of review on guardians.

Although the proposed improvements increase the cost of legal interpretation and legislation, but in the original system, due to the lack of clear abstract principles of the criteria for the determination of the court in the handling of individual cases is also required to conduct a large number of background checks, and prone to different judgments in the same case or a large discrepancy in the determination of similar cases caused by the judicial system is too inconsistent, affecting the authority of the judiciary and the degree of public confidence. Although there is no case law in China, the guiding cases of the Supreme Court and the precedents of the higher courts have a significant role in guiding the courts to make judgments, so the cost of legal interpretation can be implemented in the system, with the increase in the number of cases decided, will form more and more perfect "scene justice" The basic idea of judgment, the cost is not static.

Therefore, it is recommended to adopt the perfection proposal.

8. Conclusion

The conclusion of this paper is that the author believes that the "scene justice theory" should be introduced as a criterion to determine whether the guardian's consent to the collection and use of personal information of minors is valid. Specifically, the "scene justice of the collection and use" should be used as the basis for the interpretation of the "legitimate, reasonable and appropriate" principle. To determine whether there is scene justice, we analyze the type of information (whether it is sensitive information), the nature of the recipient of the information (e.g., whether it is a state agency, whether it conforms to the law), and the principle of dissemination of the information (whether it conforms to the relevant national standards).

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